

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PHILIP WINGEN, *et al.*,

Plaintiffs,

vs.

VENTRUM ENERGY CORP., *et al.*,

Defendants.

2:15-cv-02043-JCM-VCF

**ORDER GRANTING ENLARGMENT OF
TIME TO SERVE AND SERVICE BY
PUBLICATION (ECF NO. 110)**

Before the court is Plaintiffs' Motion for an Order to Extend the Time to Serve Defendants Mary Hill, William Sturdevant, Tari Vickery, Fossil Energy Inc., and West Salt Creek, Inc., and to Serve Defendant Mary Hill by Publication. (ECF NO. 110).

Plaintiffs filed a complaint on October 22, 2015, alleging violations of federal and state securities laws, fraud, conspiracy, racketeering, intentional and negligent misrepresentation, breaches of fiduciary duties and contract, and deceptive trade practices against Defendants. (ECF No. 1). On January 22, 2016, Plaintiffs filed an *Ex Parte* Motion And Order To Extend Time To Serve Summons Upon Defendants Mary Hill, Andrew Van Slee AKA Andrew Slee, Fossil Energy Inc., West Salt Creek, Inc., William Sturdevant, And Tari Vickery. (ECF No. 76). Plaintiffs' *ex parte* motion (ECF No. 76) was denied without prejudice to refile with proper notice and an opportunity to be heard by all parties that may be affected by the remedy. (ECF No. 78). On June 2, 2016, Plaintiffs file the instant motion. (ECF No. 110).

Plaintiffs seek the court to extend the time in which to effectuate service under Federal Rule of Civil Procedure 4(m) on the five unserved Defendants. *Id.* The unserved Defendants are Mary Hill ("Defendant Hill"), William Sturdevant, Tari Vickery, Fossil Energy, Inc., and West Salt Creek, Inc.

1 (collectively “Fossil Defendants”). Plaintiffs also seek to serve Defendant Hill by publication. *Id.* No
2 opposition has been filed by appearing parties in this matter. Under LR 7-2(d), the failure of an opposing
3 party to file points and authorities in response to any motion, except a motion under Fed. R. Civ. P. 56 or
4 a motion for attorney’s fees, constitutes a consent to the granting of the motion. The time to oppose has
5 passed and it would see that the appearing parties have consented to the granting of the instant motion.

6 **Fossil Defendants**

7 The Fossil Defendants have retained counsel, who is willing to accept service on behalf of each of
8 the Fossil Defendants. The extension of time in which to effectuate service under Federal Rule of Civil
9 Procedure 4(m) for the Fossil Defendants is granted.

10 **Service By Publication- Defendant Hill**

11 Pursuant to Fed. R. Civ. P. 4(e)(1), “an individual – other than a minor, an incompetent person, or
12 a person whose waiver had been filed – may be served in a judicial district of the United States by
13 following state law for serving a summons in an action brought in courts of general jurisdiction in the state
14 where the district court is located or where service is made.” Under Rule 4(e)(1) of the Nevada Rules of
15 Civil Procedure, “when the person on whom service is to be made resides out of the state, or has departed
16 from the state, or cannot, after due diligence, be found within the state, or by concealment seeks to avoid
17 the service of summons, and the fact shall appear, by affidavit, to the satisfaction of the court or judge
18 thereof, and it shall appear, either by affidavit or by a verified complaint on file, that a cause of action
19 exists against the defendant in respect to whom the service is to be made, and that the defendant is a
20 necessary or proper party to the action, such court or judge may grant an order that the service be made
21 by the publication of summons.”

22 Plaintiffs assert that the after diligent effort, it is unable to serve Defendant Hill within the states
23 of Nevada and California. (ECF No. 110 at 8). In support of this assertion, Plaintiffs provided the court
24 with several affidavits of attempted services (ECF No. 109-1 at pages 3 & 10). The last known addresses
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1 for Mary Hill are 2564 Williamsburg Street, Henderson, Nevada 89052 and 2036 Galaxy Dr., Newport
2 Beach, California 92660. (*Id.* at 13). Service attempts at these two addresses were unsuccessful. *Id.*

3 The court finds that pursuant to Fed. R. Civ. P. 4(e)(1) and Nev. R. Civ. P. 4(e)(1), permitting
4 service by publication of the Summons and the Complaint on the Defendant Hill is warranted. Pursuant
5 to Rule 4(e)(1)(iii), the publication must be made in a newspaper, published in the State of Nevada, for a
6 period of 4 weeks, and at least once a week during said time. Since one of Defendant Hill's last known
7 address is in California, the publication must also be made in a California newspaper for a period of 4
8 weeks, and at least once a week during said time. Nev. R. Civ. P. 4(e)(1)(iii).

9 **Extension For Service**

10 Fed. R. Civ. P. 4(m) requires a defendant to be served within 90 days after the complaint is filed.
11 If "the plaintiff shows good cause for the failure [to serve a defendant within that time-frame], the court
12 must extend the time for service for an appropriate period." Fed. R. Civ. P. 4(m).

13 Given that Plaintiffs have demonstrated "good cause" for their failure to effectuate service and
14 have provided support for their request for an extension, the court will extend the 4(m) deadline to allow
15 sufficient time for service by publication on Defendant Hill and the Fossil Defendants. *See* Fed. R. Civ.
16 P. 4(m).

17 Accordingly, and for good cause shown,

18 IT IS HEREBY ORDERED that Plaintiffs' Motion for an Order to Extend the Time to Serve
19 Defendants Mary Hill, William Sturdevant, Tari Vickery, Fossil Energy Inc., and West Salt Creek, Inc.,
20 and to Serve Defendant Mary Hill by Publication. (ECF NO. 110) is GRANTED.

21 IT IS FURTHER ORDERED that Plaintiffs are permitted to serve Defendant Mary Hill by
22 publication. A copy of the Summons and Counterclaim must be mailed to Mary Hill at her last known
23 address(es) by certified U.S. Mail, return receipt requested.
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1 IT IS FURTHER ORDERED that, pursuant to Fed. R. Civ. P. 4(e)(1) and Nev. R. Civ. P. 4(e)(1)(i)
2 and (iii), the Summons in this action must be served by publication in a newspaper, published in the states
3 of Nevada and California, for a period of four weeks and at least once a week during that time.

4 IT IS FURTHER ORDERED that the deadline to effect service of process is extended up to and
5 including February 21, 2017 for Defendant Hill.

6 IT IS FURTHER ORDERED that the deadline to effect service of process is extended up to and
7 including January 31, 2017 for the Fossil Defendants.

8 DATED this 23rd day of December, 2016.

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CAM FERENBACH
12 UNITED STATES MAGISTRATE JUDGE
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